

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF WYOMING

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4 UNITED STATES OF AMERICA, DOCKET NO. 21-CR-010-F

5 Plaintiff,

6 vs.

7 ANTHONY JEFFREY BROCHU,

8 Defendant.

Cheyenne, Wyoming  
March 16, 2021  
8:51 a.m.

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10 TRANSCRIPT OF CHANGE OF PLEA PROCEEDINGS  
11 BEFORE THE HONORABLE NANCY D. FREUDENTHAL  
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES BY ZOOM:

14 For the Plaintiff: JONATHAN C. COPPOM  
Assistant United States Attorney  
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17 For the Defendant: JORDAN DECKENBACH  
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20  
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24 *Proceedings reported by stenotype reporter; transcript produced*  
25 *with Computer-Aided Transcription.*

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1 (Proceedings commenced 8:51 a.m., March 16, 2021.)

2 COURTROOM DEPUTY: In criminal matter  
3 Case No. 21-CR-10-1-F, United States of America versus Jeffrey  
4 Anthony Brochu, set today for a change of plea hearing. The  
5 public access line is open.

6 Counsel, please state your appearances.

7 MR. COPPOM: Good morning, Your Honor. Jonathan  
8 Coppom for the United States.

9 MR. DECKENBACH: And good morning, Your Honor. Jordan  
10 Deckenbach appearing on behalf of Mr. Jeffrey Anthony Brochu  
11 who appears by video from Scotts Bluff in Nebraska.

12 THE COURT: Good morning. Counsel, what's the status  
13 of your client's written waiver to his right to appear  
14 personally?

15 MR. DECKENBACH: Yesterday, Your Honor, I reviewed  
16 that waiver with Mr. Brochu. I understand he has signed it and  
17 given it back to the Scotts Bluff staff. I'm unsure of why  
18 that has not been returned to your chambers. It was my  
19 impression that they were going to execute that late in the day  
20 yesterday.

21 COURTROOM DEPUTY: And, Judge, I just got it from them  
22 this morning, so I will forward that to you.

23 THE COURT: All right. I would ask the courtroom  
24 deputy to please swear in the defendant.

25 (Defendant sworn.)

1 THE COURT: Having been sworn, do you understand that  
2 you must respond to my questions truthfully under penalty of  
3 perjury?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Please state your full name.

6 THE DEFENDANT: Anthony Jeffrey Brochu.

7 THE COURT: And where were you born?

8 THE DEFENDANT: In Cody, Wyoming.

9 THE COURT: How far did you go in school?

10 THE DEFENDANT: Grade 13, Your Honor.

11 THE COURT: Do you have your GED?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Have you been treated recently for any  
14 drug addiction or mental illness?

15 THE DEFENDANT: Anxiety, Your Honor.

16 THE COURT: All right. And is that recent treatment?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. Are you currently under the  
19 influence of any drug or alcohol, prescribed or otherwise?

20 THE DEFENDANT: None that would impair my judgment,  
21 Your Honor.

22 THE COURT: All right. I will proceed with going  
23 through the on-the-record waiver of your right to be physically  
24 present and obtain your consent to appear by videoconference.  
25 I understand from your attorney's representations that he's

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1 discussed this with you and you signed the waiver, and it now  
2 is in our possession.

3 But I'll also talk to you to make sure that you're  
4 fully advised of your rights. This is no reflection on your  
5 attorney, certainly. It is just a on-the-record confirmation  
6 of the advisement. And I will obtain an oral waiver for  
7 proceeding forward by videoconference rather than by personal  
8 appearance.

9 Abby covered this earlier, but I just want to confirm  
10 that you can see me, your attorney and the attorney for the  
11 Government as well as a small picture of yourself -- or however  
12 it shows, might be on gallery view.

13 Can you see all of those individuals?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And were you able to hear everyone when  
16 they spoke up and announced their appearances?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: If anything happens during the course of  
19 the proceeding today, I will stop the proceeding. My Internet  
20 is a bit unstable, given where I live. Let's hope for the  
21 best. But we won't go on without everybody involved present  
22 and being able to hear and see.

23 If you need to talk to your attorney at any time, just  
24 let me know. He can do as well. Abby can send an invitation  
25 to you where you need to click a link so you can go to a room,

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1 a breakout room within the Zoom platform, which is designed to  
2 allow you and your attorney to have a confidential  
3 conversation. So you just need to let me know, or he needs  
4 to -- Mr. Deckenbach, your attorney, needs to let you know that  
5 you'd like to go to that breakout room.

6 If you need anything repeated, let me know. We will  
7 be making sure that everyone speaks up and avoids speaking over  
8 each other because my court reporter, Ms. Jan Davis -- and you  
9 should see a phone icon for her -- is on -- is present and  
10 listening to the proceedings so that she can take this down and  
11 ultimately will have a transcript of the plea proceeding.

12 There is no capturing of the video itself. All that  
13 we will have of the record of the proceeding is the court  
14 transcript.

15 Do you understand all of that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. Let's talk about your rights. You  
18 do have the right to be here in Cheyenne in the courtroom  
19 physically present. However, you can waive that right under  
20 certain circumstances, and I can accept that waiver. The  
21 circumstances require that I make an on-the-record --  
22 on-the-record record of the reasons why you're not here  
23 physically present.

24 Today is March 16th, 2021. Our country, along with  
25 the entire globe, is still in the midst of a global pandemic

1 caused by the coronavirus and now aggravated by the variants  
2 associated with the coronavirus.

3 The President of the United States and the Governor of  
4 the State of Wyoming have each declared states of emergency.  
5 Congress has passed an emergency statute which allows criminal  
6 proceedings such as this to go forward by videoconference under  
7 certain circumstances.

8 Our normal procedure would be to transport you to  
9 Cheyenne for court for any plea proceeding so that you can be  
10 here physically present along with family supporters and any  
11 members of the public.

12 But we are doing the best we can under these difficult  
13 circumstances, both with the coronavirus and now with this  
14 record-setting winter storm, to protect the health and safety  
15 of everyone involved in plea proceedings, including court  
16 staff, transport personnel, you, certainly, security personnel,  
17 myself, to conduct business without unnecessary delays.

18 However, the physical appearance of defendants in a  
19 courthouse where it is difficult to socially distance and still  
20 have appropriate conversations with those that we need to speak  
21 to creates health risks. They create health risks for you and  
22 your attorney, most significantly, but they also create health  
23 risks for everyone else within that confined space.

24 Because of those health risks, we are allowing people  
25 who wish to go forward by video teleconference the option to do

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1 so. But that option is completely voluntary. It is up to you  
2 to waive your right to be physically present.

3 Your right to be physically present in court -- in  
4 court also brings with it the right to have members of the  
5 public, which would include, in some circumstances, family  
6 members, friends and supporters, employers, and the like to be  
7 there with you.

8 To the extent that your rights to have those members  
9 of the public physically present is in any way impaired, I will  
10 ask you to waive that right. Abby did announce this morning  
11 that the public access line is open, so people have access to  
12 listen to the proceedings, but that's not the same as being  
13 physically present in the courtroom. And some defendants want  
14 that physical presence and believe that the phone line impairs  
15 their right to have supporters there physically present.  
16 That's why I get a waiver of that right as well.

17 You understand that you have the right to be  
18 physically present in court and that if you wish to pursue or  
19 advance that right, we will continue this proceeding so that  
20 with weather and other circumstances, we can ultimately get you  
21 to court? Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: And do you understand that you have a  
24 right to consult with your attorney during the course of these  
25 proceedings?

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1           And I have explained the link that you have to accept  
2           to go into a breakout room for those conversations. Do you  
3           understand that?

4           THE DEFENDANT: Yes, Your Honor.

5           THE COURT: And do you understand that you have the  
6           right to hear and see everything during the course of these  
7           proceedings, but, again, we're doing that through technology,  
8           the videoconference platform of Zoom? Do you understand that?

9           THE DEFENDANT: Yes, Your Honor.

10          THE COURT: And do you understand that family, friends  
11          and other supporters can call in, but they cannot otherwise  
12          join this proceeding, either by way of being physically  
13          present, going forward by way of videoconference or joining by  
14          teleconference? Do you understand that?

15          THE DEFENDANT: Yes, Your Honor.

16          THE COURT: And you will speak to me, as you are now,  
17          through videoconference. We will be moving to the plea  
18          proceeding if you consent and waive your right to be physically  
19          present, but, again, our discussions will be through this  
20          technological platform of Zoom.

21          Do you understand?

22          THE DEFENDANT: For today's hearing, Yes, Your Honor.

23          THE COURT: Yes, for today's hearing.

24          So you understand I -- I think I spoke over you.

25          THE DEFENDANT: Yes, I understand, Your Honor.



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1 THE COURT: And have you consulted with your lawyer  
2 concerning waiving your right to be physically present?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you agree that to the extent your right  
5 to have the public present is in any way impaired, that you  
6 waive that right?

7 THE DEFENDANT: Yes, I agree, Your Honor.

8 THE COURT: Is there any reason why I should not  
9 accept the defendant's waiver and consent to proceed by video  
10 teleconference?

11 THE DEFENDANT: No.

12 THE COURT: For defendant, Counsel?

13 MR. DECKENBACH: No, Your Honor. Thank you.

14 THE COURT: For the Government, any concerns?

15 MR. COPPOM: No, Your Honor.

16 THE COURT: Mr. Coppom.

17 MR. COPPOM: Sorry, Your Honor. Looks like maybe my  
18 Internet cut out for a second.

19 No, Your Honor, the government has no objection to  
20 proceeding by video today.

21 THE COURT: All right. For the following reasons --  
22 and let me say, if you have trouble hearing me because I do get  
23 the message that my Internet is unstable, wave your hand  
24 because I may not be able to hear you. It could freeze up on  
25 us, but we will do what we can to proceed, absent things really

1 impairing our ability to communicate.

2           So for the following reasons, I find the plea  
3 proceeding in this case cannot be further delayed without  
4 serious harms to the interests of justice and should be  
5 conducted by video teleconference.

6           Those reasons include the coronavirus and the variants  
7 which create a health risk to the participants in the plea  
8 proceeding, along with security and transport personnel. We  
9 have not achieved sufficient vaccination of inmates in our  
10 facilities, let alone the public in general, attorneys, court  
11 staff, to achieve any sort of herd immunity -- using that  
12 phrase -- to afford protection through vaccination.

13           We also are in the midst of a record snowfall event  
14 which has affected transportation to and from Scotts Bluff as  
15 well as transportation within the city of Cheyenne.

16           The defendant does have a right to a timely  
17 disposition. He has filed a plea agreement which tolls his  
18 Speedy Trial rights, but, nonetheless, his right to have the  
19 course of these proceedings move forward without unreasonable  
20 delay is a right that the Court respects and the public  
21 interest has a right to have the proceedings go forward where  
22 there is a knowing and voluntary consent to proceed consistent  
23 with the statute Congress has enacted.

24           Does defense counsel object or have supplementary  
25 reasons as to the reasons I've given to proceed by

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1 videoconference?

2 MR. DECKENBACH: No objection, Your Honor, and nothing  
3 to add to the record.

4 THE COURT: What about the Government?

5 MR. COPPOM: Nothing to add, Your Honor.

6 THE COURT: Mr. Brochu, do you have any objections or  
7 supplemental reasons to those I've given?

8 THE DEFENDANT: No objection, Your Honor.

9 THE COURT: All right. I further find that the  
10 defendant has knowingly and voluntarily waived his right to  
11 appear physically and has knowingly and voluntarily consented  
12 to appear by video teleconference.

13 I further find that the measures taken to provide for  
14 public access to this proceeding are reasonable under the  
15 circumstances and that to the extent the defendant's right to  
16 public access is in any way impaired, he's knowingly and  
17 voluntarily waived that right.

18 I accept the waiver and look forward to having his  
19 written waiver docketed in the docket for this case and will  
20 now proceed directly to the plea proceeding.

21 At this time I would ask the courtroom deputy to  
22 please mute the public access line.

23 THE COURTROOM DEPUTY: Okay, Judge, you can go. Thank  
24 you.

25 THE COURT: All right.

1           Back to you, Mr. Brochu. Have you received a copy of  
2 the indictment which includes one count, the felon in  
3 possession count?

4           THE DEFENDANT: Yes, I have, Your Honor.

5           THE COURT: And have you had an opportunity to read  
6 and discuss that charge with your attorney?

7           THE DEFENDANT: Yes, I have, Your Honor.

8           THE COURT: And are you fully satisfied with the  
9 advice and representation you've received to date from your  
10 attorney?

11          THE DEFENDANT: Yes, I am, Your Honor.

12          THE COURT: All right. I have a copy of a plea  
13 agreement.

14          Did you read and discuss the plea agreement with your  
15 attorney before you signed it?

16          THE DEFENDANT: Yes, I have, Your Honor.

17          THE COURT: And do you understand the terms of the  
18 plea agreement?

19          THE DEFENDANT: Yes, Your Honor.

20          THE COURT: Does the plea agreement in its entirety  
21 represent all the -- or include all the promises and  
22 understandings that you have with the Government?

23          THE DEFENDANT: Yes, Your Honor.

24          THE COURT: Has anyone made any promise or  
25 representation to you concerning this case or how it may

1 ultimately resolve which is not written down in the plea  
2 agreement?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Has anyone threatened you or threatened  
5 anyone you care about in order to get you to sign the plea  
6 agreement?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Now, the plea agreement, to the extent it  
9 contains promises or recommendations, particularly those from  
10 the Government, they are not binding on me. Let's use as an  
11 example the Government's promise to recommend a sentence at the  
12 low end of the guideline range. That's a promise you have from  
13 the Government. It doesn't bind me. I certainly listen to all  
14 recommendations, including joint recommendations from the  
15 parties concerning disposition, and I have to have a reasoned  
16 basis for any sentence that I impose, so I will explain why I  
17 might not accept the recommendations.

18 And I bring this up somewhat as a worst-case scenario.  
19 It doesn't mean that there's anything that I know about this  
20 case or any strong feelings I have. This is our first time  
21 meeting. And it is by way of videoconference, but I always  
22 talk about this worst-case scenario to impress upon you that  
23 the sentence that I impose may be a surprise to you compared to  
24 what is written down in the plea agreement.

25 Simply because a sentence seems overly harsh, even if

1 it doesn't at all relate to what the plea agreement states,  
2 that doesn't give you a reason to change your mind and return  
3 to a plea of guilty -- or a plea of not guilty -- excuse me --  
4 if I have accepted your plea of guilty as a knowing and  
5 voluntary plea.

6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Mr. Deckenbach, is there any reason -- or  
9 were all formal plea offers from the Government communicated to  
10 your client?

11 MR. DECKENBACH: They were, Your Honor.

12 THE COURT: All right. Back to you, Mr. Brochu.

13 Let me talk about the consequences of pleading guilty  
14 to this felony count of felon in possession of a firearm. I  
15 know from the nature of the charge that this is not your first  
16 felony, but, nonetheless, let me cover all of the consequences  
17 of being adjudged a felon.

18 Being adjudged a felon has consequences apart from any  
19 sentence you may receive on the charge. It deprives you of the  
20 right to own or possess firearms or ammunition. You can't  
21 vote, serve on a jury or serve on a grand jury. You can't run  
22 for public office.

23 In some occasions being adjudged a felon affects where  
24 you can live, work or who you may be able to associate with.

25 Had you not been born outside -- had you not been born

1 here in the United States, it might affect whether you could  
2 remain here lawfully versus being deported to your country of  
3 birth.

4 I know you were born in Cody, as was I, but do you  
5 understand these consequences of being adjudged a felon?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Let me also talk to you about the  
8 consequences that can occur at sentencing. The first  
9 consequence is time in custody. The statute provides for a  
10 range for time in custody for this charge. That range runs  
11 from zero, basically a probationary sentence, to as long as ten  
12 years.

13 Do you understand that you may serve time in custody  
14 associated with this offense?

15 THE DEFENDANT: Yes, I do, Your Honor.

16 THE COURT: There's also the possibility of a fine.  
17 Fines are based on ability to pay. So based on your ability to  
18 pay, after an investigation into your financial circumstances,  
19 I'll make a decision at sentencing about whether a fine is  
20 appropriate. The fine range is from zero, no fine for people  
21 who can't afford to pay a fine, to as much as \$250,000. These  
22 high fine ranges have never been imposed by me, but they are  
23 authorized under the statute. Again, it is all driven on  
24 ability to pay.

25 Do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: There's also the term of supervised  
3 release. We call it supervised release because most people who  
4 appear in federal court end up going into custody. That's just  
5 the nature of serious federal felonies that are charged in our  
6 district.

7 Consequently, when they're released from custody, they  
8 go into supervision. Some people call it probation because of  
9 the probation officer who supervises you, but here in the  
10 federal system we refer to it as supervised release.

11 There will be a term of supervision of three years,  
12 and during that three-year term, you will have to comply with  
13 the conditions of supervision. I will impose those conditions  
14 at sentencing.

15 Typical conditions, though, include reporting to your  
16 probation officer, being gainfully employed or going back to  
17 school. Depending upon your circumstances, there may be  
18 conditions associated with drug testing if there's a history of  
19 drug use or abuse. There could be mental health treatment and  
20 requirement to take prescription drugs if the offense conduct  
21 seems to relate to mental health issues or if we believe that  
22 that would benefit you through the course of supervision.

23 We're not here to decide all the conditions which can  
24 be imposed. There are mandatory conditions and standard  
25 conditions and special conditions. Suffice it to say, we will



1 be talking about those at sentencing, and if you have a  
2 concern, you can certainly raise those to me.

3 Once I impose the conditions of supervision, they're  
4 imposed by court order, so you must comply. Failure to comply  
5 can result in your probation officer writing you up, entering  
6 some interim sanctions. The more severe violations are brought  
7 to me, and they can result in your arrest and having to serve  
8 additional time in custody.

9 You understand supervised release, the terms and the  
10 conditions that can be imposed and the consequences of  
11 complying and not complying with the conditions?

12 THE DEFENDANT: And that is a term of three years,  
13 correct, Your Honor?

14 THE COURT: Yes. So for three years -- and sometimes  
15 people get off of supervision early. If they do well, they can  
16 write to me. We will investigate whether they're a good  
17 candidate for release. Sometimes people's jobs and the success  
18 on supervision suggests an early release is appropriate.

19 But in general, the order will issue on three years,  
20 subject to modification.

21 THE DEFENDANT: Yes, I understand, Your Honor.

22 THE COURT: All right. And there's also a \$100  
23 special assessment that's due at sentencing. Most people pay  
24 their obligations over time, sometimes into their term of  
25 supervised release.

1 Do you understand that \$100 special assessment?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Any questions about these consequences  
4 of -- which are imposed at sentencing, the actual sanctions,  
5 time in custody, possible fine, supervision and the special  
6 assessment?

7 THE DEFENDANT: No questions, Your Honor.

8 THE COURT: All right. Have you and your attorney  
9 talked about the federal Advisory Sentencing Guidelines and how  
10 they might apply to you in this case?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Good. We're all helped out by the  
13 Government's preliminary guideline calculation that they've  
14 made and filed so that it gives people a sense of how you might  
15 guideline, so there's, hopefully, no big surprises.

16 However, even though the prosecutor has penciled that  
17 out, I don't know enough about you, your past criminal history,  
18 whether some history might result in aggravating your offense  
19 level. I don't know enough about this case to make any  
20 representations to you at this time as to where you might fall  
21 in the guideline system.

22 Firearm cases are very complicated. Even though  
23 they're -- they can be relatively straightforward in terms of  
24 the elements of the offense, they can be quite complicated in  
25 guideline calculations. There can be past offense conduct that

1 makes things more challenging and difficult to -- to arrive at  
2 a preliminary guideline calculation.

3 What I can tell you is that I will sort out those  
4 guideline issues before sentencing, and I will announce the  
5 guidelines at sentencing. I am required by law to correctly  
6 calculate the guidelines, and I'm required then to consider --  
7 I'm required to consider them at sentencing as reasonable  
8 disposition for offenses like this and offenders with whatever  
9 your criminal history calculates, however I can depart or vary  
10 from the guidelines.

11 My goal is to arrive at a sentence, sufficient, but  
12 not greater than necessary, considering all of the sentencing  
13 factors for punishment for this offense. So my objective is to  
14 sentence sufficiently, but not be overly punitive, not be  
15 greater than necessary.

16 Do you understand that I cannot advise you about the  
17 guidelines at this time?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And, again, let me hit on this worst-case  
20 scenario. The guideline calculations may surprise the  
21 prosecutor and me and you. It could result in a sentencing  
22 range or a sentence that seems overly harsh or wrong to you.

23 You have remedies, but if you plead guilty today and I  
24 accept your plea of guilty, you can't turn back the clock to  
25 return to a not guilty plea.

1 Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Now, this plea agreement that you have  
4 signed is an agreement to make -- enter a plea of guilty on a  
5 conditional basis. Your attorney on your behalf filed a motion  
6 to dismiss which may have merit. I have decided that, but it  
7 could be viewed differently on appeal. If the appellate court  
8 decides that I erred in my decision, that can allow you to kind  
9 of go back and have a do-over, including perhaps even requiring  
10 the Government to dismiss the indictment against you.

11 So any guilty plea you enter today will only be  
12 conditional, affording you the chance to charge that I erred in  
13 the decision on the motion to dismiss.

14 You also have other appeal rights. You can complain  
15 about the sentence that I issue or the terms of supervised  
16 release or the monetary obligations or whatever. It is  
17 important that you know, though, that your attorney will have  
18 to file a timely Notice of Appeal.

19 So at sentencing, please let him know -- I'm assuming  
20 he already appreciates that you want to challenge the decision  
21 that is associated with the conditional plea agreement that you  
22 have entered. But there may be other things that you will want  
23 to get on the table for challenge, and so let him know what you  
24 want to contest in the appeal. Your appeal rights to the Tenth  
25 Circuit is the best place to have your arguments all on the

1 table and have the Tenth Circuit take a look at any and all of  
2 the decisions I've made. Again, it is only 14 days from the  
3 date of entry of judgment, so he needs direction from you.

4 Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Also, in the federal system, if I sentence  
7 you to time in custody, that time runs essentially day for day  
8 with no early release through parole. The -- there is no  
9 early -- there is no parole in the federal system. You might  
10 be released early through earning good-time credit or be  
11 released into a halfway house to serve the rest of your  
12 sentence and be brought better into society, have a job and  
13 earn some money before you just hit the streets, but that's not  
14 being paroled early like you might know in the state system.

15 Do you understand that?

16 THE DEFENDANT: Yes, I understand.

17 THE COURT: Let me -- before I ask you how you plead,  
18 I want to advise you of your trial rights because these rights  
19 are lost to you if you help the Government in its case by  
20 pleading guilty to the charge.

21 You have the right to put the Government to its burden  
22 of proof through the jury trial process. That includes  
23 everything from jury selection through the return of verdict.  
24 Your jury trial rights include the right to plead not guilty  
25 and persist in that plea, even though you have signed the plea

1 agreement.

2 If you pursue the case to trial, the jury will be  
3 instructed that you are presumed innocent simply because of  
4 your plea of not guilty, and the burden of proof rests entirely  
5 on the shoulders of the Government. The jury is fully  
6 instructed on the presumption of that -- of your innocence.  
7 The presumption of innocence alone is enough to acquit you of  
8 the charge.

9 The Government's burden of proof is a very high burden  
10 of proof. It's proof beyond a reasonable doubt, the highest  
11 burden in our justice system. That isn't proof beyond all  
12 doubt, but the evidence the Government gets admitted through  
13 the course of trial must firmly convince the jury of your guilt  
14 before they can return a verdict of guilty.

15 You have the right to remain silent during the course  
16 of trial, and the jury will be instructed they cannot infer or  
17 conclude anything simply because you don't take the witness  
18 stand to tell your side of the story. You are under no  
19 obligation to tell your side of the story because you have no  
20 burden of proof on your shoulders. It is always on the  
21 shoulders of the Government.

22 Your attorney will be there through jury selection and  
23 before then in pretrial matters and all the way through the  
24 course of trial and through the return of verdict and after  
25 that. He's your spokesperson and advocate in court. He, along

1 with you, helps select the jury to make sure we have a fair and  
2 impartial group of 12 jurors, plus an alternate, to decide the  
3 facts of the case. He can confront and cross-examine witnesses  
4 called by the Government and object to evidence, whether  
5 testimony or otherwise, that he believes violates the Federal  
6 Rules of Evidence. That's his advocacy role. He can make an  
7 opening statement to the jury on your behalf and make closing  
8 arguments to the jury. Again, in every respect you can rely  
9 upon him to speak for you and to be your effective advocate  
10 through trial.

11           You have the right to a unanimous verdict, so that  
12 essentially means that every juror must decide the case for  
13 himself or herself. A juror cannot surrender an honestly held  
14 opinion of the facts simply to return a verdict of guilty.  
15 They must deliberate together with an eye towards reaching a  
16 unanimous verdict, but if, on fair deliberation, they cannot,  
17 importantly, they can't return a verdict of guilty.

18           Do you understand that entering a plea of guilty wipes  
19 out these trial rights? There won't be any jury called. There  
20 won't be a jury trial. The jury won't decide the facts or  
21 return any verdict in the case.

22           Do you understand that?

23           THE DEFENDANT: Yes, I do, Your Honor.

24           THE COURT: Now, the jury on instruction is required  
25 to hold the Government to its burden of proof beyond a

1 reasonable doubt to every offense charged. Even though the  
2 name is felon in possession of a firearm, the Government is  
3 held to the burden of proof to prove everything they have  
4 accused you of in the indictment. Let's talk through those  
5 elements, because I need to hear those elements myself today.  
6 There's no jury present, but I still have to decide that the  
7 elements are satisfied on a factual basis; in other words, that  
8 the facts support the guilty plea. That protects the public  
9 because I can't accept a plea of guilty from someone who is  
10 not, in fact, guilty of the charge.

11 The indictment includes a time frame. The Government  
12 states in the indictment that the offense conduct occurred on  
13 or about October 29th of last year here in the District of  
14 Wyoming. That gives the District Court of Wyoming jurisdiction  
15 over the case.

16 The next element is you and what you did and your  
17 state of mind, that you knowingly possessed a firearm.

18 The next element deals with your status and your  
19 knowledge of that status, that at the time you knowingly  
20 possessed a firearm, you had been convicted of a felony. So  
21 that's your status. That's what makes this a status crime --  
22 namely, a pistol bearing serial number T0620-15D00541 -- so a  
23 particular serial number connected with this pistol, and that a  
24 felony is a crime punishable by imprisonment for a term  
25 exceeding one year, and that that conviction occurred before



1 your knowing possession of this pistol.

2 And, secondly, that you knew at the time you possessed  
3 the pistol that you had been convicted of a felony.

4 And the last element deals with the nature of the  
5 firearm which allows Congress to federalize this offense, that  
6 the firearm at some time prior to its coming into your  
7 possession moved through and affected interstate commerce.  
8 Sometimes defendants have no idea about the interstate commerce  
9 side of the firearm, basically the status of the firearm. And  
10 we can turn to the Government on that. But as to the other  
11 elements, the factual basis is typically laid by the defendant,  
12 sometimes with questions from counsel.

13 So, Counsel, how do you wish to proceed with the  
14 factual basis?

15 MR. DECKENBACH: Thank you, Your Honor. If I could  
16 inquire of my client as to the facts.

17 And prior to doing so, Your Honor, do you want him to  
18 enter his plea of guilty?

19 THE COURT: No, we will go through the factual basis  
20 first.

21 MR. DECKENBACH: Understood, Your Honor.

22 Mr. Brochu, I'm going to ask you a series of questions  
23 regarding what makes you guilty of this offense, okay?

24 THE DEFENDANT: Okay.

25 MR. DECKENBACH: Is it true that on or about October

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26

1 29th of 2020, you were in the District of Wyoming, that is, in  
2 the state of Wyoming?

3 THE DEFENDANT: Yes.

4 MR. DECKENBACH: And on that date were you on  
5 probation for a felony offense in the state of Wyoming?

6 THE DEFENDANT: Yes.

7 MR. DECKENBACH: In fact, you were, I think, convicted  
8 of a nonviolent drug offense of possession; is that correct?

9 THE DEFENDANT: From my probation officer or -- oh.

10 MR. DECKENBACH: Your original felony was for  
11 possession, correct?

12 THE DEFENDANT: Yes.

13 MR. DECKENBACH: And you understood that to be a  
14 felony sentence when you received it in the state of Wyoming?

15 THE DEFENDANT: Yes.

16 MR. DECKENBACH: And knowing that you were a felon on  
17 that day, did you possess a firearm?

18 THE DEFENDANT: Yes.

19 MR. DECKENBACH: Was that firearm a pistol bearing the  
20 serial number T0620-15D0541?

21 THE DEFENDANT: I'm assuming yes. I don't have the  
22 number memorized.

23 MR. DECKENBACH: But a T subpistol?

24 THE DEFENDANT: Yes.

25 MR. DECKENBACH: And the entire time you possessed

1 that firearm, you were in the state of Wyoming, correct?

2 THE DEFENDANT: Yes.

3 MR. DECKENBACH: Okay. But having talked with me, you  
4 understand that that pistol was manufactured outside the state  
5 of Wyoming; is that correct?

6 THE DEFENDANT: Yes.

7 MR. DECKENBACH: And that, therefore, at some point it  
8 moved from one state to another to get to Wyoming, correct?

9 THE DEFENDANT: Yes.

10 MR. DECKENBACH: I'd offer that as a factual basis,  
11 Your Honor.

12 THE COURT: All right.

13 Mr. Coppom, supplementation?

14 MR. COPPOM: No, Your Honor. The Government is  
15 satisfied with that factual basis.

16 THE COURT: All right.

17 Mr. Brochu, I'm reaching the point where I will ask  
18 you how you plead. Do you -- do you want to break out and  
19 speak to your attorney for any reason, or would you like me to  
20 go ahead and proceed?

21 THE DEFENDANT: You can proceed, Your Honor.

22 THE COURT: Can everyone hear me all right now?

23 I was saying that, for the record, I recognize that  
24 the defendant's plea is conditional as a term of his plea  
25 agreement, but I will ask him how he pleads to the charge.

1           With the understanding that this is a plea which is  
2 conditional under the terms of your plea agreement, Mr. Brochu,  
3 as to the sole count in the indictment in Docket 20-CR-10 which  
4 accuses you of felon in possession of a firearm, how do you now  
5 plead to that count, guilty or not guilty?

6           THE DEFENDANT: Guilty, Your Honor.

7           THE COURT: It is the finding of the Court in the case  
8 of United States of America versus Brochu that the defendant is  
9 fully competent and capable of entering an informed plea, that  
10 he is aware of the nature of the charge brought against him and  
11 the consequences of a plea of guilty, and that his plea of  
12 guilty is a knowing and voluntary plea, supported by an  
13 independent basis in fact, sufficient to satisfy all the  
14 essential elements of the offense. And the defendant is now  
15 adjudged guilty of this offense.

16           I'd like to set sentencing for May 25th at 9:00.

17           Mr. Brochu, between now and May 25th, a presentence  
18 investigation will be undertaken by an officer of the court.  
19 You might have seen Kenny Ainsworth's image earlier in the  
20 course. There he is. He's back with us -- I think to save  
21 bandwidth, he turned his video camera off. He may have some  
22 questions for you or some forms for you to complete. You do  
23 have the right to have your attorney present for questioning by  
24 the probation officer.

25           Now, Kenny's questions will probe into a wide range of

1 topics, including your background and upbringing, your  
2 educational history, work history, marital status, whether you  
3 have any dependents.

4 He will look into the nature of the offense conduct  
5 and your past criminal convictions for guideline calculation  
6 purposes. He'll also be inquiring concerning issues with  
7 mental health, physical health or substance use or abuse.

8 After the investigation is completed, a draft report  
9 is written. That report is sent to the attorneys, so you and  
10 your attorney will be reading that report and talking about it.  
11 Please bring to your attorney's attention any concerns you have  
12 factually or legally with the report. He can file objections  
13 and seek factual corrections or lodge legal objections. The  
14 Government can as well.

15 After the window has closed to receive comments on the  
16 draft report, a final report is developed that responds to any  
17 objections or issues raised by the parties.

18 That final report is sent to me and the attorneys, and  
19 before sentencing, you and your attorney will, again, read and  
20 discuss the report, see how your issues were addressed by the  
21 probation officer. You will see the guideline calculation in  
22 the draft and final report and have a sense of where you fall  
23 and what you might want to argue for a reasonable disposition  
24 or, basically, a reasonable sentence in this case.

25 So that brings us up to sentencing. Hopefully, knock

1 on wood, by May we can all be together in the courtroom so that  
2 your family and friends, if they want to join, can be there.  
3 If it is still difficult for them to get down to Cheyenne and  
4 actually be in the courtroom, they can write letters. Often I  
5 get letters from supporters talking to me about the history and  
6 characteristics of the defendant, and those can be informative.  
7 So that's an option as well. So if we can get together in open  
8 court, we will do everything we can to have you there.

9 My first job at sentencing is to on the record  
10 finalize the report. That Presentence Report is called a final  
11 report, but it really isn't final until I put my stamp of  
12 approval on it in open court. There may be issues that I still  
13 need to resolve or observations that I have to address. I can  
14 correct facts and do those matters on the record in court.

15 After those things are hammered out, I put the  
16 guideline calculation on the record so I have to make the  
17 decision about the guideline calculation. It isn't just what's  
18 in the report, often.

19 So I put that on the record, and I announce the  
20 sentencing range that guideline supports.

21 Then I turn the matter over to the attorneys for their  
22 arguments about what a fair and reasonable sentence should be  
23 in the case. Your attorney will speak first. Then I turn to  
24 the Government for the Government's arguments on the sentence.  
25 If family and friends want to make a statement, that's -- after

1 I hear from the Government, that's usually when I call them  
2 forward. They're not --

3 Can everyone hear me now? I think -- I don't have  
4 Scotts Bluff still on video.

5 COURTROOM DEPUTY: Judge, this is Abby and I can see  
6 Mr. Brochu still. It appears that you're the only one that is  
7 freezing right now.

8 THE COURT: I think it is all my -- Mr. Brochu, can  
9 you see me?

10 THE DEFENDANT: Uhm, off and on, Your Honor. It's a  
11 little glitchy, but I can hear you okay.

12 THE COURT: Well, hopefully we -- hopefully we have  
13 everybody back and we can get through this last push.

14 After I call family and friends forward, I will ask if  
15 your attorney has anything more to say. Then I will ask you if  
16 you have a statement. You have the right to make a mitigating  
17 statement to me. It is called that because people want to  
18 argue for leniency or advance mitigating circumstances that  
19 warrant leniency in sentencing.

20 But it is really whatever you want to say to me at  
21 sentencing. That's what I want to hear.

22 I encourage you to talk to your attorney about whether  
23 you should make a statement and, if so, what you want to say.  
24 Some people don't have anything to say, and that's perfectly  
25 fine too. Others have a lot. Some people write to me, and

1 that's fine. Some people read their statement. We have had  
2 every version known to man, I think.

3 So after I hear from you, I'll make my decision and  
4 enter the decision on the record. That, then, is reduced to a  
5 writing referred to as a judgment. It is that judgment from  
6 which your attorney would appeal to the Tenth Circuit to  
7 preserve your right on the conditional plea as well as anything  
8 else you want to address.

9 Is there anything, Mr. Brochu, that you want me to  
10 repeat, that my Internet interfered with?

11 THE DEFENDANT: Not at this time.

12 THE COURT: Do you have any questions for me about  
13 either the presentence report or the investigation or the  
14 sentencing process that I provided an overview of?

15 THE DEFENDANT: Nope. I'm good.

16 THE COURT: All right. Is there anything else that  
17 might benefit the case before we conclude the plea proceeding?  
18 For the Government?

19 MR. COPPOM: No, Your Honor.

20 THE COURT: For the defendant?

21 MR. DECKENBACH: No. Thank you, Your Honor.

22 THE COURT: All right. Well, Mr. Brochu, I wish you  
23 well. Stay healthy. Hopefully you've got or will be getting  
24 your shots there in Scotts Bluff, and we will see you in open  
25 court -- do our best efforts to get you here for sentencing in



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1 May. Take care.

2 THE DEFENDANT: Thank you, Your Honor.

3 THE COURT: All right, everybody.

4 (Proceedings concluded 9:43 a.m., March 16, 2021.)

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C E R T I F I C A T E

I, JANET DAVIS, Federal Official Court Reporter for the United States District Court for the District of Wyoming, a Registered Diplomat Reporter, Federal Certified Realtime Reporter, and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein on the aforementioned subject on the date herein set forth, and that the foregoing pages constitute a full, true and correct transcript.

Dated this 6th day of July, 2021.

/s/ *Janet Davis*

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JANET DAVIS, RDR, FCRR, CRR  
Federal Official Court Reporter